

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
AT CHARLESTON**

**IN RE ETHICON, INC., PELVIC REPAIR
SYSTEM PRODUCTS LIABILITY
LITIGATION**

**THIS DOCUMENT RELATES TO ALL
CASES**

**Master File No. 2:12-MD-02327
MDL 2327**

**JOSEPH R. GOODWIN
U.S. DISTRICT JUDGE**

**JOHNSON & JOHNSON'S AND ETHICON'S MOTION TO REVISE CASE
MANAGEMENT PROCEDURES AND FOR DISCOVERY RELATED
TO PLAINTIFF SOLICITATION**

During the last several years, the pelvic mesh litigation has continued to aggressively grow, with nearly one half the cases in this MDL involving only products within the TVT family. This is a perplexing statistic given the facts that these devices (a) are considered the “gold standard” for treatment of stress urinary incontinence, (b) have been endorsed by almost every relevant medical society, and (c) are among the most studied medical devices on the market.

What could account for this incongruity? Johnson & Johnson and Ethicon believe it is, in part, a direct relationship between the number of filings and the inappropriate, indeed illegal, solicitation of women by unscrupulous groups and individuals, compounded by ubiquitous attorney advertising. Numerous women have contacted Johnson & Johnson and Ethicon, upset about the disclosure of their private medical information and misled into believing Johnson & Johnson or Ethicon disseminated that information.

Johnson & Johnson and Ethicon feel compelled to inform the Court of these activities, which include the apparent misuse of women's private health information protected by HIPAA (Health Insurance Portability and Accountability Act), and encouraging women to file baseless lawsuits. These tactics and others detailed in the supporting brief not only threaten the integrity

of the judicial system, but also put women's health at risk by interfering with the doctor-patient relationship.

Johnson & Johnson and Ethicon want to rectify this untenable situation so that non-fraudulent cases can be fairly addressed and the illegal solicitation calls stopped. Plaintiffs with non-fraudulent claims are entitled to their day in court. In order to help effectuate that goal, Johnson & Johnson and Ethicon proposed mechanisms last year to cull the docket. The dramatically different landscape now underscores the need to implement such procedures.

Johnson & Johnson and Ethicon support this motion with the following exhibits:

1. Affidavits (collective exhibit of affidavits).
 - a. Affidavit A with attached emails, audio file, and certified transcript of audio file
 - b. Affidavit B
 - c. Affidavit C
 - d. Affidavit D
 - e. Affidavit E
 - f. Affidavit F
 - g. Affidavit G
2. Dickerson and Asbury, "*Mesh litigation on the rise, Hellhole report says,*" The West Virginia Record (Dec. 18, 2014).
3. Proposed discovery to MDL plaintiffs.
4. Proposed discovery to MDL counsel.
5. AUGS Final Presidential Blog.
6. Daniel M. Schaffzin, *Warning: Lawyer Advertising May Be Hazardous To Your Health! A Call To Fairly Balance Solicitation Of Clients In Pharmaceutical Litigation*, 8 Charleston L. Rev. 319, 330 (Winter 2013-14).
7. BusinessWeek article.
8. A. Liptak, "*Competing for Clients, and Paying by the Click,*" N.Y. Times (Oct. 15, 2007).

9. Brown, Todd, "Specious Claims and Global Settlements," 42 U. Mem. L.Rev. 559 (Spring 2012).
10. The Silverstein Group, *Relentless advertising suggest no end in sight for pelvic mesh litigation* (April 28, 2014).
11. The Silverstein Group, Mass Tort Advertising Report (December 2014).
12. AUGS, *Frequently Asked Questions by Providers* (March 2014).
13. AUGS, *Position Statement on Mesh Midurethral Slings for Stress Urinary Incontinence* (Jan. 3, 2014).
14. *The Truth About Vaginal Mesh*, [health.clevelandclinic.org/ 2013/06/the-truth-about-vaginal-mesh/](http://health.clevelandclinic.org/2013/06/the-truth-about-vaginal-mesh/).
15. McGovern, Francis, "An Analysis of Mass Torts for Judges," 73 Tex. L.Rev. 1821 (1995).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on January 14, 2015, I electronically filed this document with the clerk of the court using the CM/ECF system, which will send notification of this filing to CM/ECF participants registered to receive service in this MDL.

I also certify that on January 14, 2015, a CD containing the audio files which are part of Exhibit 1, were served upon Plaintiffs' Liaison Co-Counsel by depositing a true copy thereof in the regular course of the United States mail, postage prepaid, addressed as follows:

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